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10 Chapter 9 Counsel for Tulare Local Healthcare District

11 IN THE UNITED STATES BANKRUPTCY COURT
12
13 EASTERN DISTRICT OF CALIFORNIA

14 FRESNO DIVISION

15 In re

16 TULARE LOCAL HEALTHCARE
17 DISTRICT, dba TULARE
18 REGIONAL MEDICAL CENTER,

19 Debtor.

20 Tax ID #: 94-6002897
21 Address: 869 N. Cherry Street
22 Tulare, CA 93274

23 CASE NO. 17-13797

24 DC No.: LPP-1

25 Chapter 9

26 EVIDENTIARY OBJECTIONS TO
27 DECLARATION OF MATTHEW A.
28 LESNICK AND EXHIBIT FILED IN
SUPPORT OF OWEN & MINOR'S
REQUEST FOR PAYMENT OF
ADMINISTRATIVE CLAIM AND
AMENDED PROOF OF CLAIM 188

29 Date: January 17, 2019
30 Time: 9:30 a.m.
31 Place: 2500 Tulare Street
32 Fresno, CA 93721
33 Courtroom 13
34 Judge: Honorable René Lastreto II

35 Pursuant to the Federal Rules of Evidence, debtor Tulare Local Healthcare
36 District (the "District" or "Debtor") respectfully submits these evidentiary objections to the
37 "Declaration of Matthew A. Lesnick In Support of Motion for Payment of Administrative
38 Expense Claim and Amended Proof of Claim 188" ("Lesnick Declaration") and the
39 Exhibit to Declaration of Matthew A. Lesnick In Support of Motion for Payment of

1 Administrative Expense Claim and Amended Proof of Claim 188" ("Lesnick Exhibit")
2 filed by creditor Owens & Minor, Inc. ("O&M").
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4 Declarant's Testimony	5 District's Objection
<p>6 Objection No. 1:</p> <p>7 Page 2, ¶ 2 in its entirety.</p> <p>8 "Exhibit A to this declaration is a true and 9 correct copy of a spreadsheet listing the 10 amounts owed to O&M by the Debtor as 11 requested in the amended proof of claim. 12 The information in the spreadsheet was provided to me by O&M based on records kept in the ordinary course of its business."</p>	<p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>Lacks Foundation, Hearsay and Inadmissible Summary to Prove Content - Fed. R. Evid. 602, 802 and 1006</p> <p>The declarant's testimony is inadmissible because it lacks the required foundation under Federal Rule of Evidence 602 to support a finding that the declarant, O&M's counsel Matthew Lesnick, has personal knowledge of any of the information contained in the spreadsheet. There is no foundation that the declarant has personal knowledge as to: (a) whether goods were requested or shipped to the Debtor, (b) when goods, if any, were shipped or received by the Debtor; (c) the price of any goods that may have been shipped to the Debtor; (d) whether the spreadsheet accurately reflects information that may be in documents; (e) whether the declarant reviewed any documents that may be referenced in the spreadsheet; and (f) whether the spreadsheet is based on O&M's records and whether, how and by whom any such records are kept in the ordinary course of O&M's business or what O&M's practices are for maintaining its business records.</p> <p>The declarant's testimony about the content of documents summarized in the spreadsheet is inadmissible hearsay under Federal Rule of Evidence 802 to which no exception applies because it purports to describe the content of writings. The</p>

1 Declarant's Testimony	District's Objection
2 3 4 5 6 7 8 9 10	writings, which are not attached as an exhibit, speak for themselves. The information in the spreadsheet is also inadmissible because the declarant has not provided any facts to meet the criteria set forth in Federal Rule of Evidence 1006 for the use of a summary to prove the content of writings. The declarant does not provide any facts that show that the writings on which Exhibit A is allegedly based are too voluminous so that such writings cannot be conveniently examined in court.
<p>11 Objection No. 2:</p> <p>12 13 Exhibit A appended to the Lesnick Exhibit in its entirety.</p> <p>14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>Lacks Foundation and Inadmissible Summary to Prove Content - Fed. R. Evid. 602 and 1006</p> <p>Exhibit A is inadmissible because it lacks the required foundation under Federal Rule of Evidence 602 to support a finding that the declarant, O&M's counsel Matthew Lesnick, has personal knowledge of the information contained in Exhibit A.</p> <p>The declarant has not provided any facts that demonstrate he has personal knowledge regarding who prepared Exhibit A, the manner in which it was prepared, the documents on which Exhibit A is based, how those documents are kept and maintained in the ordinary course of O&M's business, or the identity of the individuals whose duty it is to maintain such records.</p> <p>Exhibit A is also inadmissible because the declarant has not provided any facts to meet the criteria set forth in Federal Rule of Evidence 1006 for the use of a summary to prove the content of writings.</p>

1 Declarant's Testimony	2 District's Objection
3	4 The declarant does not provide any 5 facts that show that the writings on 6 which Exhibit A is allegedly based are 7 too voluminous so that such writings 8 cannot be conveniently examined in 9 court.

5 For the foregoing reasons, the District respectfully requests that the Court grant
6 these evidentiary objections and exclude the inadmissible testimony.
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8 Dated: January 2, 2019

9 WALTER WILHELM LAW GROUP,
10 a Professional Corporation

11 By: Riley C. Walter
12 Riley C) Walter, Attorneys for Debtor
13 Tulare Local Healthcare District, dba
14 Tulare Regional Medical Center
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